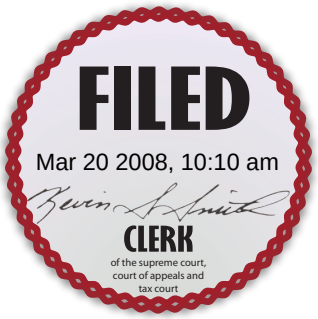

ATTORNEY FOR APPELLANT:

CRAIG PERSINGER
Marion, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ZACHARY J. STOCK
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

GREGORY FLOWERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 27A05-0710-CR-557
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GRANT CIRCUIT COURT
The Honorable Mark E. Spitzer, Judge
Cause No. 27C01-0606-FA-86

March 20, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Gregory Flowers (Flowers), appeals his convictions for four counts of child molesting, as a Class A felony, Ind. Code § 35-42-4-3.

Affirmed.

ISSUE

Whether the trial court abused its discretion in admitting hearsay evidence.

FACTS AND PROCEDURAL HISTORY

The evidence most favorable to the jury's verdict shows that in March 2006, Flowers, thirty-five, and J.T., thirteen, engaged in sexual intercourse three times and oral sex once. J.T.'s mother later found three unaddressed letters written by J.T. The first letter (Letter 1) stated, in pertinent part, "Guess what, I know this sounds weird but I can't wait to have sex again. Like the first and second it hurt but the third time was nice. Now I can't wait to do it again." (State's Ex. 1). In the second letter (Letter 2), J.T. wrote, "If you could be with any girl in the world who would it be? . . . So do we still have plans for the weekend in like 3 weeks[?] I hope so. I love goin[g] over there and spendin[g] the night with you." (State's Ex. 2). The third letter (Letter 3) began, "You know what I've decided I think we should stop talkin[g] for a while." (State's Ex. 3). When J.T.'s mother confronted her, J.T. disclosed that Flowers was the person referred to in the letters. J.T.'s mother then called police and gave them the letters.

On June 1, 2006, the State filed an Information charging Flowers with four counts of child molesting, as a Class A felony, I.C. § 35-42-4-3. A jury trial was held from July 9-11,

2007. The State called J.T.'s mother as a witness and began asking her about the letters. When the prosecuting attorney asked J.T.'s mother what Letter 1 said, Flowers' attorney made a hearsay objection. The prosecuting attorney responded, "I am not offering it to prove the truth of the matter just that how the whole investigation started and how she found out." (Transcript p. 77). The trial court overruled Flowers' objection but gave the jury the following admonishment regarding Letter 1: "[I]t is not being offered for the truth of the exhibit it is simply being offered to show the course of, uh, the investigation as it went forward and is intended for evidentiary purposes only for that purpose. Not as to whether the contents are true." (Tr. p. 78). J.T.'s mother also read Letter 2 into evidence, over Flowers' hearsay objection, and Letter 3 was admitted into evidence without being read.

Later in the trial, J.T. took the stand and testified that she and Flowers had engaged in sexual intercourse three times and oral sex once. The jury found Flowers guilty as charged, and the trial court imposed a total sentence of forty years with thirty years executed and ten years suspended to probation.

Flowers now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

On appeal, Flowers argues that J.T.'s mother's testimony regarding the letters constituted inadmissible hearsay and was improperly allowed into evidence. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Ind. Evidence Rule 801(c).

Hearsay is not admissible unless it fits within some exception to the hearsay rule. *Simmons v. State*, 760 N.E.2d 1154, 1159 (Ind. Ct. App. 2002).

A trial court has broad discretion in ruling on the admissibility of evidence. *Fentress v. State*, 863 N.E.2d 420, 422-23 (Ind. Ct. App. 2007). Accordingly, we will reverse a trial court's ruling on the admissibility of evidence only when the trial court abuses its discretion. *Id*. at 423. An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances before the court. *Id*.

Both parties direct us to *Craig v. State*, 630 N.E.2d 207 (Ind. 1994), where our supreme court encountered a situation similar to that in the case at hand. In an appeal of a child molestation conviction, the State argued that certain out-of-court statements were offered not to prove the facts asserted in the statements but rather to prove that the victim's mother made a police report and to explain why the police investigated as they did. Our supreme court rejected the State's argument, noting that there was no contested issue with regard to either the specific content of the mother's report to police or the propriety of the police's decision to investigate the report. *Id*. at 211.

Here, when the State sought to have J.T.'s mother testify regarding the letters, Flowers lodged a hearsay objection. In response, the State argued, as it had in *Craig*, that it was offering the letters not to prove the matters asserted therein but rather to show "how the whole investigation started and how [J.T.'s mother] found out" about J.T.'s relationship with Flowers. (Tr. p. 77). The trial court overruled Flowers' objection. On appeal, Flowers correctly notes that in his case, as in *Craig*, there was no contested issue regarding the

content of J.T.'s mother's report to police or the propriety of the police's decision to investigate. As such, Flowers argues that the trial court erred in overruling his hearsay objection.

In light of *Craig*, Flowers' argument is not without merit. Ultimately, however, we need not decide whether the trial court erred in admitting J.T.'s mother's testimony regarding the letters into evidence, because we conclude, as did the court in *Craig*, that any error was harmless. Reversal for error in the admission of hearsay testimony is appropriate where the evidence causes prejudice to the defendant's substantial rights. *Craig*, 630 N.E.2d at 211. But, "a timely and accurate admonishment is presumed to cure any error in the admission of evidence." *Kirby v. State*, 774 N.E.2d 523, 535 (Ind. Ct. App. 2002), *reh'g denied*, *trans. denied*. Likewise, any error in the admission of evidence is harmless if the erroneously-admitted evidence was cumulative of other evidence appropriately admitted. *McVey v. State*, 863 N.E.2d 434, 440 (Ind. Ct. App. 2007), *reh'g denied*, *trans. denied*.

Here, the trial court admonished the jury that Letter 1, the only one of the three that referred explicitly to sex, was "not being offered for the truth of the exhibit[.]" (Tr. p. 78). Furthermore, to the extent that the letters described a sexual relationship between J.T. and Flowers, they were merely cumulative of J.T.'s own trial testimony that she and Flowers had sexual intercourse three times and oral sex once. Given the trial court's admonishment and the cumulative nature of the contents of the letters, any error by the trial court in admitting

the letters into evidence was harmless. *See Craig*, 630 N.E.2d at 211 (finding error in admission of hearsay to be harmless in light of molestation victim's testimony).

CONCLUSION

Based on the foregoing, we conclude that any error by the trial court in the admission of hearsay evidence was harmless.

Affirmed.

KIRSCH, J., and MAY, J., concur.